No. SC87199

IN THE SUPREME COURT OF MISSOURI

GRINELL MUTUAL REINSURANCE COMPANY,	**)**
	)
Respondent,	**)**
	)
vs.	**)**
	)
JOHN BEST, TAMMY BEST, and TRENTON BEST, a minor child,	**)**
	)
Appellants.	**)**

APPEAL FROM THE CIRCUIT COURT OF DAVIESS COUNTY, MISSOURI
THE HONORABLE GARY D. WITT

APPELLANTS' REPLY BRIEF

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ARGUMENT

The trial court erred in ordering, adjudging and decreeing in its February 17, 2005 Order that the total funds available for distribution between the parties is $300,000.00, because section 483.310, RSMo., which authorized the Circuit Clerk of Daviess County to appropriate $12,327.75 of interest which had accrued on $300,000.00 of interpleaded funds deposited in the court's registry is private property and the Clerk's appropriation of the interest which had accrued on the interpleaded funds deposited in the court's registry to compensate Appellants for their damages constituted a taking of Appellants' private property for public use without just compensation.

A. Standard of Review

Because the constitutional validity of a statute is a question of law, this Court reviews decisions passing on or relating to such questions de novo. *See, e.g.*, *State ex rel. Upchurch v. Blunt*, 810 S.W.2d 515, 516–17 (Mo. 1991). If a statute conflicts with a constitutional provision or provisions, this Court must hold that the statute is invalid. *Id.* at 516.

B. Argument in Response to Issues Respondent Circuit Clerk Raised in Her Brief that Appellants Did Not Address in Their Brief

In her brief, Ms. Adkins raises three issues which Appellants did not touch on in their brief and to which Appellants wish to reply: (1) whether the state action

requirement has been met; (2) whether section 483.310, RSMo. violates the compensatory provisions of the takings clause and (3) whether the Bests are entitled to just compensation.

1. The State Action Requirement Is Satisfied

Ms. Adkins argues that the Bests should not be allowed to prevail because there has been no "state action" upon which a constitutional violation can be based. This argument ignores the fact that the Bests base their appeal on the fact that Ms. Adkins retained interest which had accrued on interpleaded funds belonging to the Bests and the other interpleader defendants for public uses, such as remodeling the clerk's office in the Daviess County courthouse. Ms. Adkins cannot argue that she was not a governmental actor when she retained the interest or that she was not acting within the course and scope of her duties as a governmental actor when she retained interest.

As mentioned Appellants' Brief, this case is similar to *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980), where a circuit clerk retained interest which had accrued on an interpleaded fund pursuant to a state statute authorizing such retention. In *Beckwith*, the Court found, by implication, that the clerk's retention of interest pursuant to statute was sufficient state action to constitute a constitutional violation. *See id.* Accordingly, Ms. Adkins' retention of interest in this case is sufficient state action to form the basis of a constitutional violation.

Even the case Ms. Adkins primarily relies on for her argument that there was no state action demonstrates that there was state action. In *American Manufacturers Mutual Ins. Co. v. Sullivan*, 526 U.S. 40 (1999), the U.S. Supreme Court stated that the test for state action requires that (1) there is an alleged constitutional deprivation caused by the exercise of some right or privilege created by the state and (2) that the person charged with the deprivation is a state actor. *Id.* at 50. In this case, the Bests are asserting that a constitutional deprivation occurred when Ms. Adkins took their private property—interest—without providing them just compensation. Ms. Adkins readily admits that she took and retained the interest pursuant to section 483.310.2, RSMo. LF 59, 55–64. There is also no question that Ms. Adkins was a state actor when she took the interest. Consequently, the state action test is satisfied in this case.

2. Section 483.310, RSMo. Violates the Compensatory Provisions of the Takings Clause

In her brief, Ms. Adkins spends a great deal of time arguing that the Bests are responsible for their own loss because section 483.310.1, RSMo. provided them with an opportunity to obtain interest accruing on the interpleaded funds and they did not take advantage of that opportunity. This argument misses the mark for a couple of reasons.

First, the takings clause of the Fifth Amendment applies to any instance where a governmental actor or entity takes private property for public use without providing the owner with just compensation. Specifically, the takings clause

provides that **"PRIVATE PROPERTY" SHALL NOT "BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION."** Its simple, unequivocal language does not discriminate between takings by force and takings where the property owner might have had an opportunity to avoid the taking. Instead, the takings clause unambiguously states that just compensation must be paid to property owners whenever their property is taken for a public use.

In this case, the $300,000 deposited in the court's registry belonged to the Bests and the other interpleader defendants. Consequently, interest which accrued on that principal amount belonged to the Bests and the other interpleader defendants under the "interest follows principal" rule. *See Phillips v. Washington Legal Foundation*, 524 U.S. 156, 172 (1998) ("[W]e hold that the interest income generated by funds held in IOLTA accounts is the 'private property' of the owner of the principal."); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980) ("The earnings of [an interpleaded] fund are incidents of ownership of the fund itself and are property just as the fund itself is property."); *State Highway Comm'n v. Spainhower*, 504 S.W.2d 121, 126 (Mo. 1974) (holding that interest accruing on a special fund belonged to the owner of that fund); *Beckford v. Tobin*, 27 Eng. Rep. 1049, 1051 (Ch. 1749) ("[I]nterest shall follow the principal, as the shadow the body."). Ms. Adkins distributed the principal sum of $300,000, but retained all of the interest which had accrued thereon. LF 59. She never paid the interpleader defendants just compensation because she did not pay them the $12,327.75 in exchange for the interest she retained. And she used the interest for

public uses, such as remodeling her office. LF 59. Therefore, Ms. Adkins plainly violated the Fifth Amendment by taking interest belonging to the Bests and the other interpleader defendants for public use without just compensation. And because she acted pursuant to section 483.310, such statute is unconstitutional to the extent that it permits to clerks to appropriate interest which accrues on deposited funds for public use without just compensation.

Second, the legislature cannot redefine traditional property rights to evade the Fifth Amendment. In essence, Ms. Adkins argues that section 483.310 is constitutional because the legislature can define when and on what terms interpleader defendants can obtain interest which accrues on funds deposited in a court's registry. This is not true. In *Schneider v. California Department of Corrections*, 151 F.3d 1194 (9th Cir. 1998), a group of prison inmates sued the California Department of Corrections, contending that a state statute establishing "inmate trust accounts" was unconstitutional in that it required that interest accruing on those accounts be deposited into a separate inmate welfare fund accessible to the general population. The state argued that the statute was constitutional because the interest belonged to whoever the statute said the interest belonged to. The court strongly disagreed and held that the interest was private property under the "interest follows principal" rule. *Id.* at 1200. The *Schneider* court explained that a state cannot roll back or eliminate traditional property interests by statute. *Id.* It further stated that "[t]he States' power vis-à-vis property thus operates as a one-way ratchet of sorts; states may, under certain

circumstances, confer 'new property' status on interests located outside the core of constitutionally protected property, but they may not encroach upon traditional 'old property' interests found within the core." *Id.* at 1200–01. The *Schneider* court explained that core property rights are defined by reference to traditional background principals of property law **and one such principal is the rule that "interest follows principal."** *Id.* at 1201.

Here, the interpleader defendants owned the $300,000 deposited in the court's registry. *See* LF 28–33, 117. They also owned the principal which accrued on that sum under the "interest follows principal" rule. *See Phillips v. Washington Legal Foundation*, 524 U.S. 156, 172 (1998) ("[W]e hold that the interest income generated by funds held in IOLTA accounts is the 'private property' of the owner of the principal."); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980) ("The earnings of [an interpleaded] fund are incidents of ownership of the fund itself and are property just as the fund itself is property."); *State Highway Comm'n v. Spainhower*, 504 S.W.2d 121, 126 (Mo. 1974) (holding that interest accruing on a special fund belonged to the owner of that fund); *Beckford v. Tobin*, 27 Eng. Rep. 1049, 1051 (Ch. 1749) ("[I]nterest shall follow the principal, as the shadow the body."). The legislature cannot encroach upon the interpleader defendants' well-established property right in the interest by crafting a statute which allows the clerk to take the interest away from them if they do not make an application to the clerk within sixty days after the fund is deposited requesting that it be placed in a separate interest bearing account.

If they are allowed to do so, the legislature will be able to enact statutes which create property windfalls for the government and immunize such windfalls from constitutional scrutiny. Thus, section 483.310 is unconstitutional to the extent it permits clerks to appropriate interest for public use without just compensation.

In sum, section 483.310 is unconstitutional insofar as it permits clerks to appropriate interest accruing on private funds for public use without just compensation. If a statute is unconstitutional in the first place, how can the Bests and the other interpleader defendants be blamed for not complying with the unconstitutional statute? They cannot.

3. The Bests Are Entitled to Just Compensation

Ms. Adkins argues that the Bests and the other interpleader defendants are not entitled to just compensation because they have not suffered a loss. This argument is not credible. As demonstrated above and in Appellants' Brief, the Bests and the interpleader defendants were entitled to interest accruing on the interpleaded funds under the "interest follows principal" rule. Such interest was $12,327.75, not an insignificant sum of money. In addition, section 483.310 did not authorize Ms. Adkins to retain the interest as a fee for services rendered or as payment for some other benefit the Bests received. Thus, the Bests and the other interpleader defendants have literally lost $12,327.75. And because they have suffered a compensable loss, they are entitled to just compensation in the amount of $12,327.75. *See Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980) (overruling the Florida Supreme Court's ruling that the interpleader

defendants were not entitled to $100,000 in interest which had accrued on interpleaded funds).

Ms. Adkins argues that the Bests pursued their remedy improperly by trying to have her held in contempt. However, the Bests were merely following the steps taken by the interpleader defendant in *Beckwith*. In that case, $100,000 of interest had accrued on the funds which had been deposited in the court's registry by the time the principal was distributed. Pursuant to a state statute, the clerk refused to pay the interest to the interpleader defendant. 449 U.S. at 158. The interpleader defendant moved the circuit court to require the clerk to pay the interest money to it and the circuit court granted that motion. *Id.* The clerk appealed and prevailed in the Florida Supreme Court and then the interpleader defendant appealed to the U.S. Supreme Court and prevailed there. *Id.* The U.S. Supreme Court never took issue with the way the interpleader defendant had raised its takings claim or with the fact that a separate action was not commenced. The Bests have done nothing different than the interpleader defendant in *Beckwith* and therefore their complaint that section 483.310, RSMo. is unconstitutional is properly before this Court.

Under Missouri law, courts have inherent power to enforce their orders and should do to so when called upon. *E.g.*, *Multidata Sys. Int'l Corp. v. Zhu*, 107 S.W.3d 334, 339 (Mo. Ct. App. 2003). The power to hold the subject of an order in contempt is part of this Court's inherent power to enforce its orders. *See K. Khan v. Wortham*, 983 S.W.2d 539, 541 (Mo. Ct. App. 1999) ("Civil contempt is

intended to benefit a party who has a judgment and to coerce compliance with that judgment."). Moreover, contempt proceedings can be initiated by motion, rather than through the commencement of an independent action. *Tashma v. NuCrown, Inc.*, 23 S.W.3d 248 (Mo. Ct. App. 2000) (indicating that contempt proceedings may properly be initiated by motion). And the contemnor does not have to be a party to the litigation which gave rise to the order; they only need to be the subject of a court order. *See Chicago Truck Drivers v. Brotherhood Labor Leasing*, 207 F.3d 500, 507 (8th Cir. 2000) ("It is well-settled that a court's contempt power extends to non-parties who have notice of the court's order and the responsibility to comply."); *State ex rel. Chicago, Burlington & Quincy R.R. Co. v. Bland*, 88 S.W. 28, 33 (Mo. 1905) (indicating that contempt can consist of a refusal on the part of a party or a person to do an act which the court has ordered him to do for the benefit of a party to a suit or action).

Here, the circuit court ordered Ms. Adkins to pay John and Tammy Best the interest that had accrued on funds interpleaded in this action on October 9, 2003 and October 20, 2003, meaning she was the subject of that court's order. Ms. Adkins refused to pay this sum and John and Tammy Best timely filed a Motion for Contempt. Consequently, the circuit court has the inherent power to enforce its order by holding her in contempt and requiring her to pay an amount equal to the interest she has withheld.

CONCLUSION

For the reasons set forth herein and in Appellants' Brief, this Court should reverse the circuit court's February 17, 2005 Order and the August 8, 2005 Judgment and remand the case to the circuit court with instructions to enter an order decreeing that an additional $12,327.75 remains available for distribution to Appellants and the other interpleader defendants.

Respectfully submitted

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RULE 84.06(c) CERTIFICATE OF COMPLIANCE

I hereby certify that Appellants' Reply Brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains 2,972 words and 407 lines of text.

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CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of Appellants' Reply Brief were sent via U.S. mail on the 2nd day of March 2006, and on disk containing same, to the following opposing counsel:

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CERTIFICATION OF VIRUS FREE DISK

I hereby certify that the disk filed with and containing Appellants' Reply Brief has been scanned for viruses and is virus free.

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